

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

KENNETH AND ANDREA BUTLER,)

Plaintiffs,)

v.)

Case No. CV412-244

GMAC MORTGAGE, INC.,)

MORTGAGE ELECTRONIC)

REGISTRATION SYSTEMS,)

RESIDENTIAL FUNDING)

CORPORATION, and DEUTSCHE)

BANK TRUST COMPANY,)

Defendants.)

ORDER

Plaintiffs have filed a notice of voluntary dismissal in this wrongful foreclosure case. (Doc. 7.) The trouble is, defendants have already answered *and* filed a motion to dismiss with prejudice. (Docs. 3 & 4.) Since defendants have answered, plaintiffs have lost the right to dismiss the action without consequence. *See* Fed. R. Civ. P. 41(a)(1) (explaining that a plaintiff may only dismiss an action without court intervention prior to the filing of an answer). They may only obtain a dismissal by court order “on terms that the court considers proper.” Fed. R. Civ. P. 41(a)(2). In other words, the plaintiffs cannot force a without prejudice

dismissal this late in the proceedings.

Since they have failed to respond to defendants' motion to dismiss, they have, in effect, conceded that a with prejudice dismissal is warranted. *See* S.D. Ga. LR 7.5 ("Failure to respond within the applicable time period shall indicate that there is no opposition to a motion."). Hence, the Court is inclined to grant defendants' motion, and dismiss this action *with prejudice* to refile. Nevertheless, plaintiffs' are clearly unfamiliar with the Rule 41, and their intentions remain unclear. A with prejudice dismissal is an extreme measure that would effectively end their ability to litigate this matter in the future. The Court will thus allow them fourteen days from the date of this Order to file a brief explaining whether they concede that the action should be dismissed with prejudice. Should they fail to submit a brief, the Court will likely dismiss this matter with prejudice.

SO ORDERED this 16th day of January, 2013.


UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA